



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN

Media and Communications Law Section  
La Section du droit de l'information et  
des télécommunications

## 16<sup>th</sup> Biennial National Conference

# New Developments in Communications Law and Policy

A National Symposium of The Law Society of Upper Canada and the Media and  
Communications Law Section of The Canadian Bar Association

**Co-Chairs:** Grant Buchanan, *McCarthy Tétrault LLP*  
Laurence Dunbar, *Fasken Martineau DuMoulin LLP*

Thursday April 26, 2012 (from 10:00 a.m. to 4:30 p.m.)  
Friday April 27, 2012 (from 9:00 a.m. to 2:30 p.m.)

Ottawa Convention Centre, 55 Colonel By Drive, Ottawa, ON

SKU CLE12-00412

### Steering Committee:

**Pamela Dinsmore**, Vice President, Regulatory – Broadband and Video,  
*Rogers Communications Inc.*

**David Elder**, *Stikeman Elliott LLP*

**Denis Henry**, Vice-President-Regulatory, Government Affairs, and Public Law, *Bell Aliant*

**John Keogh**, Senior General Counsel, *CRTC*

**David Kidd**, *Blake, Cassels & Graydon LLP*

**Monique McAlister**, *Goodmans LLP*

**Margot Patterson, C.S.**, *Fraser Milner Casgrain LLP*

**Christopher Taylor**, Barrister and Solicitor

**This national conference on communications law and policy** is designed for lawyers, industry executives, and government officials. This year's program includes a wide choice of plenary and concurrent lectures, as well as panel sessions canvassing current issues.

## **BOOK BONUS:**

In addition to the conference materials, registrants will receive a copy of the 11th edition of the *Canadian Broadcasting Regulatory Handbook*, the 6th edition of the *Regulatory Guide to Canadian Television*, the 3<sup>rd</sup> edition of the *Regulatory Guide to Canadian Radio*, and the first edition of a new publication, the *Canadian Telecommunications Regulatory Handbook*. The new publication focuses on telecom and spectrum regulation and contains a detailed synopsis. All four books are being published on the opening day of the conference.

### **Schedule of Events**

**Thursday April 26, 2012**

**8:00 a.m. – 10:00 a.m. Registration**

#### **PLENARY SESSION**

**10:00 a.m. - 10:10 a.m. Opening Remarks**

**10:10 a.m. - 11:30 a.m. Technology Game Changers**

Technology continues to evolve at an unprecedented rate. Conventional models for the provision of broadcasting and telecommunications services are increasingly threatened as OTT services and Internet intermediaries take market share from both BDUs and broadcasters. Major manufacturers are designing telecommunications equipment that can bypass traditional wireless and wireline networks and content providers are pursuing new opportunities to control the wireless delivery of their own products and services. What do consumers want from new technology? What game-changing technologies are on the horizon and how will they affect the provision of digital communications and content services to Canadians?

Moderator: **Michael Binder**, President and CEO,  
*Canadian Nuclear Safety Commission*

Panellists: **Jeffrey Campbell**, Senior Director,  
Americas Region Government Affairs,  
*Cisco Systems Inc.*

**David Neale**, President, *Neale and Associates*

**Kaan Yigit**, President, *Solutions Research Group*

**11:30 a.m. - 11:45 a.m. Coffee Break**

## CONCURRENT SESSIONS

11:45 a.m. - 1:15 p.m.

### **The Reports of the Death of the CRTC Have Been Greatly Exaggerated**

Despite oft-heard predictions that the CRTC will become redundant in the digital economy, CRTC regulation is persisting if not expanding. Telecom regulation continues to be pervasive and adversarial (especially wholesale regulation). Broadcasting regulation shows no signs of abatement (with recent decisions creating the potential for increased regulatory intervention in relations between broadcast distributors and programmers). And the CRTC is implementing increased enforcement tools in both arenas. Is this level of micro-regulation and enforcement consistent with government's desire for a competitive communications industry and the Cabinet's telecommunications Policy Direction, or is it a necessary outcome to achieve those objectives?

Moderator: **Denis Henry**, Vice-President – Regulatory, Government Affairs, and Public Law, *Bell Aliant*

Paper: **Mirko Bibic**, Senior Vice-President, Regulatory and Government Affairs, *BCE Inc.*

Panellists: **Joel Fortune**, Barrister and Solicitor  
**Christian Tacit**, Barrister and Solicitor

## OR

11:45 a.m. - 1:15 p.m.

### **Copyright Reform, 2012 – Changing the Rulebook**

2012 will see significant changes to copyright law and policy in Canada, with important repercussions for the communications industry. Long-awaited legislative amendments are intended to bring the *Copyright Act* into the digital age. An unprecedented number of copyright appeals are before the Supreme Court of Canada. After years of seeking copyright reform and clearer rules, will the Canadian communications industry get what it needs?

Moderator: **Dr. Sunny Handa**, *Blake, Cassels & Graydon LLP*

Paper: **Gerald (Jay) Kerr-Wilson**, *Fasken Martineau DuMoulin LLP*  
**Ariel Thomas**, *Fasken Martineau DuMoulin LLP*

Panellists: **Gerald (Jay) Kerr-Wilson**, *Fasken Martineau DuMoulin LLP*  
**Ariel Thomas**, *Fasken Martineau DuMoulin LLP*  
**Ken Thompson**, Director & Counsel,  
Copyright and Broadband Law, *Rogers Communications Inc.*  
**Stephen Zolf**, *Heenan Blaikie LLP*

**1:15 p.m. - 2:45 p.m.**

**Buffet Luncheon**

*“The Economics and Politics of a Majority Government”*

Speaker: **Jeffrey Simpson**, National Affairs Columnist  
*The Globe and Mail*

**CONCURRENT SESSIONS**

**2:45 p.m. - 4:30 p.m.**

**Double Jeopardy – Interjurisdictional Immunity and the Communications Industry**

In 2007, the Supreme Court changed the constitutional doctrine of interjurisdictional immunity, making it more difficult for federal undertakings to establish immunity from provincial legislation. This has increased the exposure of federally regulated telecom and broadcasting companies to provincial consumer protection legislation and municipal by-laws affecting tower sites and other infrastructure. What are the implications of this shift in Canadian constitutional law for the communications industry?

Moderator: **Christopher Taylor**, Barrister and Solicitor  
Paper: **Leslie Milton**, *Fasken Martineau DuMoulin LLP*

Panellists: **Michael Janigan**, Executive Director and General Counsel, *Public Interest Advocacy Centre*  
**Peter Ruby**, *Goodmans LLP*

**OR**

**2:45 p.m. - 4:30 p.m.**

**Value of the Transaction**

Since the Commission codified the requirement for contributions of tangible benefits of six per cent of the “value of the transaction” for radio in 1998, and 10 percent for television in 1999, there has been a constant evolution in the Commission’s approach as to what should be included in calculating that value (i.e. debt, operating and

capital leases, minority interests, redundant assets, tax-loss carry forwards, working capital, synergies, etc.). The panel will discuss the history, evolution, and anomalies in the application of the policy and whether or not this approach to regulation still has merit.

Moderator: **Stephen Millington**, Senior Legal Counsel,  
*CRTC*

Paper: **Bram Abramson**, *McCarthy Tétrault LLP*  
**Grant Buchanan**, *McCarthy Tétrault LLP*  
**Ken Goodwin**, Partner,  
*PricewaterhouseCoopers LLP*  
**Sandra McEwen, CA, CBV, MMPA,**  
**B.Sc.**, Vice-President, Consulting & Deals  
(Valuations, Forensics & Disputes),  
*PricewaterhouseCoopers LLP*

Panellists: **Kelly Lynne Ashton**, Director of Policy,  
*Writers Guild of Canada*  
**Bram Abramson**, *McCarthy Tétrault LLP*  
**Charlotte Bell**, Vice-President, Regulatory  
and Government Affairs, *Shaw Media Inc.*  
**Ken Goodwin**, Partner,  
*PricewaterhouseCoopers LLP*

**4:30 p.m. - 5:30 p.m.**

**Reception – (cash bar) Ottawa Convention Centre**



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### *Schedule of Events*

**Friday April 27, 2012**

#### **PLENARY SESSION**

**9:00 a.m. - 10:15 a.m.**

#### **Communications Regulation 2.0**

The global communications landscape continues to shift, driven by such factors as digital technology and cross-platform industry consolidation and competition. As formerly distinct delivery platforms, business models, and roles converge, there are increasing overlaps and conflicts between the regulators and regulatory regimes for broadcasting, telecommunications, spectrum, copyright, competition, and consumer protection. Many nations, including Canada, have been grappling with the regulatory challenges presented by convergence. In Australia, a government-appointed Convergence Review Committee

has just completed a detailed examination of the policy and regulatory frameworks that apply to the converged media and communications landscape in that country, and has made many detailed recommendations for reform. Is Canada's current legal and institutional framework up to the challenges of the new reality or are we also in need of reform? What can we learn from the experiences of other jurisdictions in working with converged regulators?

Moderator: **The Honourable Konrad von Finckenstein, Q.C.**,  
Former Chairman, *CRTC*  
Paper: **Malcolm Long**, Member, *Australian Government Convergence Review Committee*  
Panellists: **Sheridan Scott**, *Bennett Jones LLP*  
**Michael Ryan**, *Arnold & Porter (UK) LLP*

**10:15 a.m. - 10:30 a.m.**      **Coffee Break**

## CONCURRENT SESSIONS

**10:30 a.m. - 12:00 p.m.**      **Trends in Telecom Regulation**  
The past several years have seen significant developments in the regulation of telecommunications and spectrum. The paper by Hank Intven will identify these developments and comment on the trends that he sees. The panel will provide their perspectives on the trends identified in Mr. Intven's paper.

Moderator: **Richard French**, CN-Tellier | Professor of Business and Public Affairs, *University of Ottawa*  
Paper: **Hank Intven**, *McCarthy Tétrault LLP*  
Panellists: **Len Katz**, Chairman (Acting), *CRTC*  
**Helen McDonald**, Senior Assistant Deputy Minister Spectrum, Information Technologies and Telecommunications, *Industry Canada*

## OR

**10:30 a.m. - 12:00 p.m.**      **Effectiveness of the Group-Based Licensing Scheme**  
In March, 2010, the CRTC announced its new policy framework for group-based licensing to give broadcasting groups more flexibility in response to significant shifts in the Canadian communications landscape, including the

migration of viewers from regulated to unregulated platforms and from linear media (scheduled) options to on-demand options. In July, 2011, the CRTC renewed the licences for the major English-speaking television groups and, in the process, implemented its new policy framework. This panel will examine whether or not the new policy framework is meeting the CRTC's objectives. In particular, the session will cover the continued appropriateness of Canadian programming exhibition requirements in light of changing viewing habits and the new expenditure requirements, whether the expenditure requirements are flexible enough for licensees to innovate, and whether genre protection continues to make sense in today's multi-platform digital media landscape.

Moderator: **Scott Hutton**, Executive Director,  
Broadcasting, *CRTC*

Paper: **Kevin Goldstein**, Vice-President,  
Regulatory Affairs, *Bell Media Inc.*  
**Robert Malcolmson**, *Goodmans LLP*

Panellists: **Monique Lafontaine**, Vice-President,  
Regulatory Affairs, Television Division,  
*Zoomer Media Limited*  
**Jay Thomson**, Vice-President, Broadcasting  
Policy and Regulatory Affairs, *Canadian  
Media Production Association*  
**Susan Wheeler**, Vice-President,  
Regulatory, *Rogers Media*

**12:00 p.m. - 1:00 p.m.**

### **Buffet Luncheon**

*“The CBC and Its Future”*

Speaker: **Richard Stursburg**, President  
*Aljess Holdings Inc.*

### **CONCURRENT SESSIONS**

**1:00 p.m. - 2:30 p.m.**

#### **Canada's Foreign Ownership Restrictions**

Why is Canada one of the last WTO nations to retain substantive restrictions on foreign ownership and control of telecom carriers? How troublesome are these rules for carriers and investors? What are the expected consequences of liberalizing these rules? If the rules are liberalized,



would the Investment Canada process be more or less troublesome for carriers and investors?

Moderator: **Michael Hennessy**, Senior Vice-President, Regulatory and Government Affairs, *TELUS*

Paper: **Grant Buchanan**, *McCarthy Tétrault LLP*  
**Lorne Salzman**, Barrister and Solicitor

Panellists: **Monica Auer**, *ML Auer Law*  
**Navin Joneja**, *Blake, Cassels & Graydon LLP*

**Andrew Lipman**, *Bingham*  
(Washington, D.C.)

**OR**

**1:00 p.m. - 2:30 p.m.**

**Competition and Choice**

The CRTC regulates wholesale access, UBB and net neutrality in the telecommunications industry, and signal carriage and program rights on traditional and emerging broadcasting platforms. What opportunities to differentiate their services do these policies create or destroy for the largest and smallest players? Do these policies ultimately promote meaningful competition? Or do they reduce competitive choice for Canadians?

Moderator: **Lawson Hunter, Q.C.**, *Stikeman Elliott LLP*

Paper: **Michael Koch**, *Goodmans LLP*

Panellists: **Steve Anderson**, Founder and Executive Director, *OpenMedia.ca*

**Margaret Sanderson**, Vice-President, Antitrust & Competition Economics, *Charles River Associates*

**2:30 p.m. Program Ends**

**Total CPD = 10.5 Substantive Hours**